

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

MAY 16 2016

JULIA C. DUDLEY, CLERK
BY: *H. McDonald*
DEPUTY CLERK

UNITED STATES OF AMERICA

Criminal Action No. 4:05-CR-00011

v.

MEMORANDUM OPINION

WILLIE JUNIOR MCCAIN,
Petitioner.

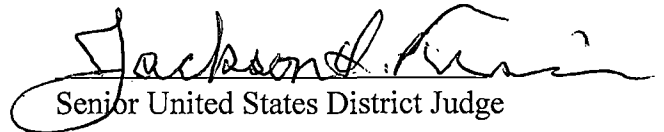
By: Hon. Jackson L. Kiser
Senior United States District Judge

The petitioner has filed a Motion to Vacate, Set Aside, or Correct Sentence, pursuant to 28 U.S.C. § 2255, seeking sentence relief under Johnson v. United States, 135 S. Ct. 2551 (2015). Pursuant to Standing Order 2015-5, I appointed the Federal Public Defender to represent petitioner in order to determine whether he may qualify for relief under Johnson. Upon review of the motion and court records, I find that the § 2255 motion must be dismissed as successive.

This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria. See § 2255(h). Court records indicate that petitioner previously has filed three § 2255 motions concerning this same conviction and sentence, all of which the court has denied. See McCain v. United States, No. 7:07-CV-00301 (W.D. Va. Apr. 29, 2008); McCain v. United States, No. 4:05-CR-00011 (W.D. Va. Oct. 17, 2011); McCain v. United States, No. 4:05-CR-00011 (W.D. Va. Oct. 1, 2012). Because petitioner offers no indication that he has obtained certification from the court of appeals to file a successive § 2255 motion, I do not have jurisdiction to address it and must dismiss it without prejudice. Based upon my finding that defendant has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to defendant. Defendant is advised that if he wishes to seek assistance in advancing any claim that may be available to him under the Johnson decision, he may contact the Office of the Federal Public Defender, 210 1st Street Southwest #400, Roanoke, VA 24011. Any future filings regarding Johnson, however, should be filed by counsel as defendant is represented.

Date: May ¹⁶~~8~~, 2016.


Senior United States District Judge